



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

February 14, 1997

Mr. Kenneth R. Yarbrough
Chief of Police, Richardson Police Department
P. O. Box 831078
Richardson, Texas 75083-1078

OR97-0348

Dear Mr. Yarbrough:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. We assigned your request ID# 103730.

The Richardson Police Department (the "department") received a request for a copy of a facsimile transmission. The document at issue is from an anonymous sender. You assert that the document is excepted from disclosure pursuant to sections 552.101, 552.102, 552.103, and 552.108 of the Government Code.

We note initially that the facsimile document at issue indicates that copies were sent to various news organizations. You state that the *Richardson Daily News* is the only news organization that received a copy of the document, but that the newspaper has not published the document at issue. For purposes of this ruling, we assume that the document has not been made public through publication by a news organization.

The test to determine whether information is private and excepted from disclosure under common-law privacy provisions, which are encompassed in sections 552.101 and section 552.102 of the Government Code, is whether the information is (1) highly intimate or embarrassing to a reasonable person and (2) of no legitimate public concern. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 930 (1977); *Hubert v. Harte-Hanks Texas Newspapers Inc.*, 652 S.W.2d 546 (Tex. App.-Austin 1983, writ ref'd n.r.e.). The records at issue relate to the alleged job performances and work behaviors of public servants. There is a legitimate public interest in how a public servant conducts himself while on-duty and how he performs job functions. Open Records Decision Nos. 470 (1987) at 4 (public has legitimate interest in job performance of public employees); 423 (1984) at 2 (scope of public employee privacy is narrow).

You contend that the document at issue is excepted from disclosure because if various allegations are untrue it could place certain employees in a false light. In Open Records Decision No. 579 (1990) at 7, this office stated that the purpose of the Open Records Act "is best served by the disclosure of even doubtful information, even if

embarrassing, if it relates to the conduct of the public's affairs." *See also Cain v. Hearst Corp.*, 878 S.W.2d 577 (Tex. 1994) (Texas does not recognize tort of false-light invasion of privacy); Open Records Decision No. 579 (1990) at 3-8 (section 552.101 does not incorporate the tort of false light privacy, overruling prior decisions to the contrary).

To show that section 552.103(a) is applicable, a governmental entity must show that (1) litigation is pending or reasonably anticipated and (2) the information at issue is related to the litigation. *Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4. In Open Records Decision No. 452 (1986) at 4, this office stated:

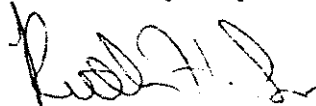
Litigation cannot be regarded as "reasonably anticipated" unless there is more than a "mere chance" of it -- unless, in other words, we have concrete evidence showing that the claim that litigation may ensue is more than mere conjecture. Whether litigation is reasonably anticipated must be determined on a case-by-case basis. [Citations omitted.]

In this situation the prospect of litigation is too speculative for section 552.103(a) to be applicable. Open Records Decision No. 518 (1989) at 5 (governmental body must show that litigation involving a specific matter is realistically contemplated).

Section 552.108 excepts from disclosure "[i]nformation held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime." and "[a]n internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution." Gov't Code § 552.108; *see Holmes v. Morales*, 924 S.W.2d 920 (Tex. 1996). The document at issue deals with internal personnel issues and is not the type of record that is protected from disclosure pursuant to section 552.108. Therefore, the requested record must be provided to the requestor.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy
Assistant Attorney General
Open Records Division

RHS/ch

Enclosures: Submitted document

Ref.: ID# 103730

cc: Ms. Brenda Martinez
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(w/o enclosures)